



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL, CNR, MNDCT

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notices to End Tenancy, pursuant to section 46; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26, 46 and 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Tenant A.T. (the "tenant") testified that the landlord was served the notice of dispute resolution package by registered mail within three days of applying for dispute resolution, but could not recall the date specifically. The landlord confirmed receipt of the tenant's notice of dispute resolution via registered mail but could not recall on what date. I find that the landlord was served with this package in accordance with section 89 of the *Act*.

The landlord testified that the landlord's notice of dispute resolution package was posted on the tenant's door within three days of applying for dispute resolution, but could not recall the date specifically. The tenant confirmed receipt of the landlord's notice of dispute resolution package which was posted on her door, but could not recall the date she received it. While the landlord's dispute resolution package was not served

on the tenant in accordance with section 89 of the *Act*, I find that the landlord's notice of dispute resolution package was sufficiently served, for the purposes of the *Act*, pursuant to section 71 of the *Act*.

The tenant testified that she served her first amendment on the landlord sometime in August 2018. The landlord confirmed receipt of the first amendment package but could not recall on what date. I find that the first amendment package was served in accordance with section 88 of the *Act*. The tenant's first amendment added a monetary claim in the amount of \$4,000.00 and applied to cancel a second 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of August 14, 2018 (the "Second 10 Day Notice").

The tenant testified that she served her second amendment on the landlord via regular mail sometime in August 2018. The tenant did not submit any evidence regarding the service of her second amendment. The landlord testified that he did not receive the tenant's second amendment. The tenant's second amendment applied to cancel a third 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of August 27, 2018 (the "Third 10 Day Notice"). I find that service of the tenant's second amendment was not effected on the landlord; therefore, I dismiss the claims listed in the tenant's second amendment package, with leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the 10 Day Notices to End Tenancy for unpaid rent and the continuation of this tenancy are not sufficiently related to the tenants' monetary claim to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenants' other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notices. I exercise my discretion to dismiss the tenants' claim for a Monetary Order for damage or compensation under the *Act* with leave to reapply.

Issue(s) to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notices to End Tenancy, pursuant to section 46 of the *Act*?
2. If the tenants' application to cancel any of the 10 Day Notices is dismissed and the 10 Day Notices are upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?
3. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
4. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26, 46 and 67 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 30, 2017 and is currently ongoing. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on July 6, 2018 he posted a 10 Day Notice to End Tenancy with an effective date of July 19, 2018 (the "First 10 Day Notice") on the tenants' door. The tenant confirmed receipt of the First 10 Day Notice on July 6, 2018.

The landlord testified that on August 2, 2018 he posted the Second 10 Day on the tenants' door. The tenant confirmed receipt of the Second 10 Day Notice on August 2, 2018.

Both parties agreed that the tenants have not paid rent for May, June, July, August and September of 2018. Both parties agree that the tenants owe the landlord \$5,000.00 in unpaid rent.

Both parties agree that prior to the issuance of the First 10 Day Notice, the landlord and tenant entered into the following payment schedule:

- \$1,000.00 to be paid on July 15, 2018;
- \$1,000.00 to be paid on July 30, 2018;
- \$1,000.00 to be paid on August 15, 2018;
- \$1,000.00 to be paid on August 30, 2018;
- \$1,000.00 to be paid on September 15, 2018.

Both parties agree that none of the above listed payments have been made by the tenants to the landlord.

Both parties agree that the tenants live in a suite within a larger home and that the tenants' mail is delivered to the main portion of the house which is currently vacant. Both parties agree that the landlord attends at the main portion of the house to collect the mail and slips the tenants' mail under the door to the tenants' suite. The landlord testified that he does this at least once per week. The tenant testified that she does not know how frequently the landlord attends at the house to collect and forward the tenants' mail.

The tenant testified that she could not pay the rent on time because her Employment Insurance payment was delayed. The tenant testified that it was her opinion that her Employment Insurance was delayed because the landlord did not forward her mail to her in a timely fashion.

Analysis

Based on the testimony of both parties, I find that service of the First 10 Day Notice was effected on the tenant on July 6, 2018, in accordance with section 88 of the *Act*.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. Section 26(1) applies even if the landlord breaches the *Act*, the regulation or the tenancy agreement. Section 26(1) applies even if the tenant is having financial difficulties. Pursuant to section 26(1), I find that the tenants were obligated to pay the monthly rent in the amount of \$1,000.00 on the first day of each month from May to September 2018 which they failed to do. I find that the tenants owe the landlord \$5,000.00 in back rent from May to September 2018.

Pursuant to the First 10 Day Notice, this tenancy was scheduled to end on the effective date of July 19, 2018; however, the tenant filed to dispute the First 10 Day Notice within the allowed time frame under section 46 of the *Act*. Upon reviewing the tenants' application and hearing the testamentary evidence of both parties, I find that the tenants' application to dispute the First 10 Day Notice is without merit. I dismiss the tenants' application to cancel the First 10 Day Notice without leave to reapply.

Upon review of the First 10 Day Notice I find that it complies with the form and content requirements set out in section 52 of the *Act*.

Since I have dismissed the tenant's application to cancel the First 10 Day Notice and upheld the landlord's First 10 Day Notice, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Because I have found that this tenancy has ended, pursuant to section 46 and 55 of the *Act*, I decline to consider the tenant's application to cancel the Second 10 Day Notice.

The landlord is successful in his application; I therefore find that he is entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
May rent	\$1,000.00
June rent	\$1,000.00
July rent	\$1,000.00
August rent	\$1,000.00
September rent	\$1,000.00
Filing fee	\$100.00
TOTAL	\$5,100.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 11, 2018

Residential Tenancy Branch